

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

John C. Beery III,

Complainant,

vs.

Madden Creek Water Company (U92W),

Defendant.

(ECP)

Case 12-12-014

(Filed December 21, 2012)

John C. Beery III, Complainant.Amie Haskell and Robert Marr for Madden Creek Water Company,
Defendant.**DECISION DENYING THE COMPLAINT****1. Summary**

Complainant, John C. Beery III requests a refund of \$1,500 from Madden Creek Water Company for over billing of water service and compensation for an unapproved easement through his property to serve other customers.

The request for relief is denied as discussed below. This proceeding is closed.

2. Positions of the Parties

John C. Beery III (Beery or Complainant) seeks a refund of \$1,500 for overbilling by Madden Creek Water Company (Madden Creek). Beery contends that Madden Creek has been charging him for three service connections although

only one of the three buildings on his property currently has water service. Beery contends that the other two building have been gutted and without water service for up to 14 years and therefore he is due a refund for two water service connections.

Beery also contends that Madden Creek installed a service line through his property to provide service to other properties without an easement. Beery's complaint does not specify the amount of compensation sought for the easement and asks the Commission to determine the appropriate amount.

Madden Creek states that Complainant misunderstands the actual billing status for his property. Madden Creek contends that Complainant is not charged for three service connections, but for one service connection serving two residences at 5075 Sans Souci Terrace. During its investigation of the complaint, Madden Creek found that it had not been charging Beery for a separate service connection to a cabin at 5065 Sans Souci Terrace, and therefore, had been undercharging Complainant for water service. Madden Creek states that there was never a dispute regarding the water service billing until Complainant became the customer for billing purposes.

Madden Creek also contends that the subject easement was based on an understanding with Beery's father (the previous property owner) and because Beery is not the current owner of record, he has no standing for a claim regarding the easement.

3. Discussion

Beery's water service address is 5075 Sans Souci Terrace. The service provides water to a house and detached bunkhouse on that parcel. There is also a separate service connection to a structure at 5065 Sans Souci Terrace. Complainant states that there has been no water service to 5065 Sans Souci

Terrace for 14 years and the bunkhouse has also been without water for over a decade.

Parties agree that Complainant's father cooperated with the father of Madden Creek's current owner in developing the water service to the property. According to Madden Creek, the service connection for 5065 Sans Souci Terrace has never been billed to Complainant or his father. Until 2005, Complainant's father who was also responsible for the water bills held title to all the property. In 2005, title to the property was transferred to another party not named in this complaint. In October 2013, ten months after the complaint was filed and five months after the hearing in this matter, title to the property was recorded in Complainant's name.

Madden Creek is a small water company with less than 20 connections. Customers are billed on an annual basis and the service is not metered. Unless there is a problem with the water service or billing issues, Madden Creek does not have regular contact with its customers or their property. Madden Creek's bills are basic and contain the account number, service dates (January 1st through December 31st of each year), the date when bills will be deemed past due, and the amount due. There is no description of the type of service or breakdown of charges for each customer. For instance, the billing for Beery does not state that it is for one service connection serving two residences or structures and does not provide a breakdown of the annual amount for this type of service.

Before the dispute was brought to the Commission for resolution, the ill-will between the parties over the billing dispute escalated to the point that Beery turned the water back on, after it had been turned off by Madden Creek for lack of payment. Beery then parked a truck over the conduit containing the

turn-on and shut-off valve. This blocked any attempt by Madden Creek to turn the water off. Beery does not deny this.

At the hearing held on May 17, 2013 in South Lake Tahoe, the Judge questioned Beery about a photo he provided of the uninhabited bunkhouse. Items in the photo indicated it was currently inhabited. Beery denied renting out the house. Further questioning by the Judge revealed that although the occupant was not a paying tenant, technically, it was inhabited because Beery was allowing a friend to occupy the bunkhouse.

Madden Creek provided photos of a non-circulating fountain on Beery's property, which was left running day and night even though there was snow on the ground. The service is not metered. Under Tariff Rule 11.B.3, a utility can discontinue service in instances where there is a negligent or wasteful use of water. This waste of water is particularly troubling given the state of our water resources.

Madden Creek also provided photos of concrete that had been poured into the conduit containing the turn-on and shut-off valve to Beery's service connection, essentially fixing the water valve in its on position. Madden Creek blames Beery and Beery blames Madden Creek or a random vandal for the action, however, no other Madden Creek property was vandalized at the time. It doesn't make sense that Madden Creek would vandalize its own property or fix the water valve in an on position at a service address with a past due balance.

Beery is not the only party to engage in bad behavior. Robert Marr, the President of Madden Creek, appeared uninvited at a social gathering held by Beery and threatened to turn the water off if Beery did not pay the past due balance. Because Beery had insufficient funds, a collection was taken from the

attendees to cover the balance due. Beery's testimony contains letters from attendees attesting to this. Madden Creek does not deny that this occurred.

3.1. Easement

At the time the complaint was filed, Beery did not hold title to the property and therefore, had no standing to seek compensation for an unapproved easement. In the meantime, Madden Creek installed a new main to serve other customers and only a service line remains on Beery's property. Finally, even in the absence of the above circumstances, the Commission does not have jurisdiction to resolve real property disputes. Accordingly, the request for compensation for an unapproved easement is denied.

3.2. Billing

The billing history is muddled and parties' testimony at the hearing did little to clear it up. There was misunderstanding by both parties as to the actual billing status of the property. Beery contends he was overbilled for service and at one point even Madden Creek was unsure how many service connections were on the property and being billed to Complainant. That mystery was solved for Madden Creek when it discovered that it had never billed Beery for the separate service connection at 5065 Sans Souci Terrace and only the single service connection serving two residences at 5075 Sans Souci Terrace is being billed to Beery.

Beery contends that the service to the bunkhouse and cabin was shut off at owners request in 1996, and therefore a refund is due. Based on photos provided by Complainant it is clear that no water is currently being consumed at the 5075 Sans Souci Terrace bunkhouse or the cabin at 5065 Sans Souci Terrace since all the plumbing fixtures have been removed and the interior pipes cut. The photos indicate that it has been this way for some time. However, just

removing interior plumbing fixtures will have no impact on the bill because the service was installed as one service connection serving two residences and the service is flat rate. There is no way to turn service off to just one of the residences, as there is only one turn-on and shut-off valve to the service address. If the valve is turned on, both residences have water service available to them. If the valve is turned off, neither residence will have water service. The water service was installed this way with the original owner's assistance and consent and has always been billed as one service connection serving two residences. Removing the plumbing fixtures is not the controlling factor here. If Beery had replaced all the plumbing fixtures, water would have been available to the bunkhouse with no action required by Madden Creek. If Beery wishes to revise the service connection configuration and the billing status, he should contact Madden Creek to determine what it would cost to make this change and then decide whether it is worth it.

For these reasons, Complainant's request for a refund is denied.

The miscommunication between the parties and the ensuing misbehavior may have been avoided. Madden Creek's water bills do not provide sufficient information for a customer to understand the basis for their bill, especially if there are multiple residences or structures being served. For that reason, we require Madden Creek to provide billing information regarding the kind of service being provided and the rate for that service. If, as in this case, there is one service connection serving two residences or structures, the bill should individually list the amount due for the basic service charge and any charge for the additional structures. Itemizing the charges for basic service and any service beyond basic service should be provided on all customers' bills where necessary.

4. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Linda A. Rochester is the assigned Administrative Law Judge in this proceeding.

IT IS ORDERED that:

1. Complainant, John C. Beery III's request for compensation for an unapproved easement is denied.
2. Complainant, John C. Beery III's request for a refund for overbilling is denied.
3. Starting January 2015, Madden Creek Water Company must provide additional information on its bills regarding the type of water service at each service address and individually list the charge for basic service and each service beyond basic service.
4. No later than October 1, 2014, Madden Creek Water Company must file a Tier 2 Advice Letter modifying Tariff Rule 9 on Rendering and Payment of Bills that incorporates the substance of Ordering Paragraph 3.
5. Case 12-12-014 is closed.

This order is effective today.

Dated _____, at San Francisco, California.